



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis wiehed u ghoxrin (21) ta' Gunju 2018

Rikors Numru 67/13 FDP

**Joseph Cordina
(ID 55762G)**

vs

Victor Camilleri

Il-Qorti:-

Rat ir-rikors promotur ippresentat fis 6 ta' Marzu 2013 fejn ir-rikorrent talab lill-Qorti sabiex l-intimat jigi kkundannat li:

thallas lill-attur dik is-somma li din il-Qorti tiddetermina ai termini ta' l-Att dwar l-Istampa, bhala danni u riparazzjoni tal-malafama li huma soffra meta bhala Editur tal-gurnal Il-Mument, f'diversi artikoli pubbliakti fil-harga tal-Hadd 24 ta' Frar 2013 fosthom fis-suppliment tal-istess gurnal bl-artikolu "L-Amministratur Finanzjarju tal-MLP wara l-iskandlu taz-zejt" u fl-ewwel u t-tieni pagna tal-istess gurnal, ghamilt allegazzjonijiet foloz u malafamanti fil-konfront tal-istess attur bi skop li toffendi l-unur u l-fama tieghu u li ttelliflu jew tnaqqas r-reputazzjoni, il-gieh u l-kredibilita' tieghu, meta implikajtu fl-iskandlu taz-zejt u li kellu involviment fit-tixhim fix-xirki taz-zejt tal-Enemalta, u f'illegalitajiet jew irregolaritajiet ohra.

Rat l-eccezzjonijiet ta' l-intimat Victor Camilleri ippresentati fil-25 ta' April 2013 fejn laqa' ghal dak mitlub billi ressaq is-segweni eccezzjonijiet:

Illi l-esponenti jecepixxi l-privilegg kwalifikat a tenur tal-Art. 12A tal-Kap 248 billi l-pubblikazzjoni de quo tikkonsisti frapport ta' diskors minn persuna identifikata waqt Konferenza Stampa liema diskors kien ragonevolment gustifikabbli f'socjeta' demokratika.

Illi minghajr pregudizzju ghall-premess, l-pubblikazzjoni de quo mhix libelluza billi tikkonsisti f'esspressjoni ta' opinjoni bbazata fuq fatti sostanzjalment veri u ghalhekk tammonta ghall- "fair comment" jew "value judgement" dwar persuna pubblika, u dana huwa dritt ta' kull cittadin protett kemm mill-Kostituzzjoni ta' Malta u kemm mill-Konvenzjoni Ewropea

Semghet ix-xhieda tar-rikorrenti **Joseph Cordina** moghtija fit-13 ta' Ottubru 2014 u rat id-dokumentazzjoni minnu ppresentata, ossija s-Suppliment illi hareg mal-gazzetta Il-Mument, imsejjah 'l-istejjer tal-mument', fejn gie ppubblikat l-artijiet meritu tal-kawza odjerna.

Rat l-affidavit ta' **Joseph Cordina** u **Charles Scerri** ippresentati fis-7 ta' Frar 2014 u fil-21 ta' Marzu 2014 rispettivament fl-atti tal-kawza 58/13 fl-ismijiet Joseph Cordina vs Alexander Attard, li l-partijiet fit 13 ta' Ottubru 2014 qabblu illi kellhom jiffurmaw parti mill-kawza odjerna.

Rat illi fl-20 ta' Novembru 2014 il-partijiet qabblu illi l-provi migbura fil-kawza 58/13 fl-ismijiet 'Joseph Cordina et vs Alexander Attard' kellhom japplikaw ghall-kawza odjerna.

Rat ix-xhieda in kontro ezami ta' Joseph Cordina moghtija fil 21 ta' Marzu 2014, l-affidavit ta' **Dr Martin Fenech** ippresentat fl 14 ta' Mejju 2014 u x-xhieda in kontro ezami ta' Joseph Cordina moghtija fit 23 ta' Gunju 2014 lkoll fl-atti tal-process 58/13.

Semghet ix-xhieda ta' Joseph Cordina moghtija fl-20 ta' Novembru 2014, kif ukoll id-dokumentazzjoni minnu ppresentati, liema dokumentazzjoni jinsabu fil-kawza 59/13, ossija Dikjarazzjoni moghtija lill-Pulizija ta' Malta minn Carmelo sive Charles Scerri fit 30 ta' Jannar 2013 (fol 34), dokument mibghut lill Dr Manfred Galdes, Direttur tal-Financial Intelligence Analysis Unit (FIAU), datata 4 ta' Gunju 2013 b'informazzjoni rikjesta mill-istess FIAO (fol 36) u korrispondenza mibghuta mill-FIAU datata 11 ta' Lulju 2013 fejn r-rikorrenti gie mgharraf "we would like to inform you that the FIAU has no further enquires at this stage." (fol 42)

Rat ix-xhieda ta' Carmel Scerri u ta' Dr Martin Fenech prodotta fil-kawza 59/13 fl-20 ta' Novembru 2014 u reza applikabbli ghall-kawza odjerna skond verbal tal-20 ta' Novembru 2014.

Rat illi r-rikorrent ddikjara illi ma kellux aktar provi x'jipresenta.

Rat ix-xhieda ta' **Tonio Fenech** prodotta fil-kawza 59/13 moghtija fis-26 ta' Marzu 2015 u rat id-dokumentazzjoni minnu esebita li tinkludi rapport intitolat 'Powerplan Limited Investigative Audit Report' redatt minn Joseph Azzopardi ta' FST Consulting Limited u datat 20 ta' Jannar 2011. (fol 93)

Rat illi kopja informali tal-Mandat ta' Inibizzjoni Nru 525/14 fl-ismijiet 'John's Group Limited et vs George Farrugia et' esebita fil-kawza 59/13 u annessi fil-11 ta Gunju 2015.

Semghet ix-xhieda ta' l-intimat **Alexander Attard** moghtija fis-16 ta' Novembru 2015 u rat id-dokumentazzjoni minnu esebita, ossija t-trascript tal-Konferenza Stampa illi nzammet fil-21 ta' Frar 2013 u li tinstab esebita fl-atti tal-kawza 59/13.

Rat ix-xhieda ulterjuri ta' Tonio Fenech moghtija fit 28 ta' Jannar 2016 u d-dokumentazzjoni minnu esebiti.

Semghet ix-xhieda ta' **Victor Camilleri** moghtija fit-28 ta' Jannar 2016.

Semghet ix-xhieda ta' **Dr Manfred Galdes** moghtija fit 28 ta' Jannar 2016 u rat id-dokumentazzjoni minnu esebita, ossija Implementing Procedures mahruga mill-FIAU fl-20 ta' Mejju 2011 u esebita fl-atti tal-kawza 59/13.

Semghet ix-xhieda in kontro ezami ta' Joseph Cordina moghtija fil-11 ta' April 2016

Semghet ix-xhieda in kontro ezami ta' Carmel Scerri moghtija fis 26 ta' Mejju 2016.

Semghet il-kontro ezami ta' Tonio Fenech moghtija fl-24 ta' Novembru 2016 u fil 25 ta' Jannar 2018.

Rat illi fil 25 ta' Jannar 2018 il-partijiet ddikjaraw illi ma kellhomx aktar provi x'jipresentaw.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet illi saret fis-26 ta' April 2018, wara liema trattazzjoni il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Il-Qorti tibda biex tghid illi quddiema llum, ma ghandhiex biss il-kawza odjerna, izda ghandha tlett kawzi illi lkoll ghandhom l-istess fattispecie tal-kaz. Jirrizulta, di fatti, illi l-Qorti gahndha quddiemha tlett kawzi:

- Il-kawza odjerna intavolata mir-rikorrent kontra Victor Camilleri li tirrigwarda pubblikazzjoni illi saret f'suppliment ippubblikat mal-harga tal-gazzetta Il-Mument tal-24 ta' Frar 2013;
- Il-kawza fl-ismijet Joseph Cordina, Carmel Scerri u Dr Martin Fenech vs Tonio Fenech, Rik Nru 59/13 li tirrigwarda Konferenza Stampa illi inghata mill-istess Tonio Fenech fil 21 ta' Frar 2013, u
- Il-kawza fl-ismijiet 'Joseph Cordina vs Alexander Attard', Rik Nru 58/13 li tirrigwarda artikolu ppubblikat fil-gazzetta In-Nazzjon tat 22 ta' Frar 2013 intitolat 'L-Amministratur Finanzjarju tal-MLP wara l-iskandlu taz-zejt';.

Jirrizulta illi l-fattispecie tal-kaz, fit-tlett kawzi, huma l-istess, ossija il-kontenut tal-allegazzjonijiet illi saru minn Tonio Fenech, dak iz-zmien Ministru tal-Gvern tal-gurnata, liema allegazzjonijiet saru fil 21 ta' Frar 2013 waqt Konferenza Stampa illi saret fiz-zmien tal-kampanja ghall-Elezzjoni Generali illi saret fl-10 ta' Marzu 2013, u dana fl-isfond ta' allegazzjonijiet u proceduri kriminali illi kienu hargu u nbdew ftit gimghat qabel, ossija 'l hekk imsejjah 'Skandlu taz-Zejt'.

Jirrizulta illi r-rikorrent, Joseph Cordina, fiz-zmien meta hargu tali allegazzjonijiet, kien l-Amministratur Finanzjarju tal-Partit Laburista kif ukoll kien Kandidat ghall-Partit Laburista gewwa Ghawdex, liema kandidatura huwa sussegwentement irtira rizultat tal-allegazzjonijiet ili kienu saru.

Ikkunsidrat

Jirrizulta illi waqt Konferenza tal-Ahbarjiet illi saret fid-Dar Centrali tal-Partit Nazzjonalista fil-21 ta' Frar 2013 u indirizzata minn Tonio Fenech, fl-eqqel tal-kampanja elettorali, l-intimat Tonio Fenech ghamel referenza ghall-istejjer illi kienu hergin dak iz-zmien in konnessjoni ma' 'l hekk imsejjah 'Skandlu taz-Zejt' u li kienu jinvolvu varji persuni, fosthom certu George Farrugia.

Jirrizulta illi, waqt l-istess Konferenza tal-Ahbarjiet, l-intimat ghamel referenza ghall rapport illi kien gie ppresentat f'proceduri illi kien hemm il-Qorti kontra l-istess George Farrugia intitolat '*Powerplan Limited Investigative Audit Report*', liema rapport gie redatt fl-20 ta' Jannar 2011 minn certa Joseph Azzopardi ta' FST Consulting Limited .

Jirrizulta illi skond hut George Farrugia, illi lkoll flimkien ma' George Farrugia kienu propratarji tal-kumpannija Powerplan Limited, li kienet taqa' taht il-kappa tal-John's Garage Group of Companies, ta' liema kumpannija Powerplan l-istess George Farrugia kien Managing Director, kienu qed jallegaw illi George Farrugia kien qieghed jghaddi xoghol li suppost jinghadda minn Powerplan Limited minn go kumpannija ohra, li kienet tieghu, u li kien jisimha Aikon Limited.

Jirrizulta illi l-kumpannija Aikon Limited, illi tissemma fir-rapport fuq imsemmi, ghanda azzjonist u direttur wiehed, ossija il-kumpannija Intershore Fiduciary Services Limited, ta' liema kumpannija r-rikorrent Joseph Cordina, flimkien ma' Charles Scerri u Dr Martin Fenech huma azzjonisti.

Jirrizulta illi l-kumpannija Aikon Limited kienet qed tissemma fl-istejjer u fil-proceduri kriminali illi kienu jirrigwardaw l-allegazzjonijiet tal-hekk-imsejjah 'Skandlu taz-Xejt', liema stejjer kienu jimplikaw illi George Farrugia, illi inghata l-Proklama Presidenzjali sabiex ikun jista jixhed dwar kazijiet ta' tixhim illi fihom kien involut hu ma' terzi minghajr ma jinkrimina ruhu, kien ghamel uzu wkoll tas-socjeta Aikon Limited ghal tali tixhim fejn kien jircieci hlasijiet.

Jirrizulta illi, in vista tal-fatt illi s-socjeta Aikon Limited kienet socjeta illi fiha kien hemm involuta s-socjeta Intershore Fiduciary Services Limited, f'liema socjeta kienu hemm azzjonisti r-rikorrent, kif ukoll zewgt persuni ohra, ossija Charles Scerri u Dr Martin Fenech, Tonio Fenech sejjah Konferenza tal-Ahbarjiet fejn qal, fost affarjiet ohra "*wara gimghat li l-PL ilu jipprova jimplika politikament minghajr success xi ministri f'dan l-iskandlu, issa johrog bic-car li wara dan l-iskandlu hemm l-Amministratur Finanzjarju tal-PL. U se nuri kif wasalna ghal din il-konkluzjoni.*" (fol 116 59/13)

Ikkunsidrat

Jirrizulta illi, sussegwenti ghall allegazzjonijiet maghmulha minn Tonio Fenech fil-Konferenza tal-Ahbarjiet, il-gazzetta il-Mument ippubblikat suppliment fil-harga taghha ta' nhar ta' Hadd, f'pubblikazzjoni separata inserita fil-gazzetta, liema publikazzjoni kienet fuq karta ehxen minn dik tal-gazzetta u ta' materjal aktar attraenti, f'liema suppliment, li kien intitolat 'Stejjer tal-Mument', kien hemm storja illi bdiet fil-faccata tas-suppliment u, hdejn ritratt ta' Joseph Cordina flimkien ma' Dr Joseph Muscat, b'tipi kbar kien hemm mitkub "**L-Amministratur Finanzjarju tal-MLP wara l-iskandlu taz-zejt**"

Jirrizulta illi l-artikolu, li imbghad ikompli fiz-zewgt pagni tan-nofs ta' l-istess suppliment, jghid is-segwenti:

Irricerka li ghamel il-Partit Nazzjonalista turikif l-uniku shareholder, l-uniku direttur, ir-rapprezentant guridiku u r-rapprezentant legali tal-kumpanija Aikon Ltd kienet Intershore Fiduciary Services Ltd, li wiehed mid-direttur taghha hu proprju Joe Cordina, l-Amministratur Finanzjarju tal-Partit Laburista.

Jirrizulta illi z-zewgt pagni tan-nofs tas-suppliment, imbghad, huwa dedikati ghal din l-istorja u, fuq il-parti ta' fuq taz-zewgt pagni izda mifruxa fuq iz-zewgt pagni, kien hemm titolu "Iz-zejt u l-Partit Laburista" fejn hemm tpingijiet ta' varji azzjonjiet illi saru, fi forma ta' 'flow chart', fejn kollox imbghad jippunta lejn kaxxa li bi tipa normali tghid:

*Intershore Ltd
Shareholder uniku u Direttur 2002-2011 ta' Aikon Ltd (bejn 2002 u l-2004 kienet maghrufa bhala MD & Petrotek)
Wiehed mix-Shareholders u d-Diretturi ta' Intershore Ltd huwa
Joe Cordina*

Jirrizulta illi f'tali kaxxa, filwaqt illi l-kliem kollu huwa ppubblikat b'tipa f'it aktar minn normal, il-kliem Joe Cordina huma ppubblikati b'tipa ferm akbar u kulur differenti, jien jitfa aktar prominenza fuq tali kliem.

Jirrizulta wkoll illi sussegwentement hemm kaxxa ohra, b'ritratt tar-rikorrent Joseph Cordina, u hdejh il-kliem segwenti:

Joe Cordina

- 1. L-Amministratur Finanzjarju tal-Partit Laburista*
- 2. Direttur ta' Holdings Ltd tal-Partit Laburista*
- 3. Direttur ta' Sound Vision Print Ltd*
- 4. Direttur ta' Consultancy & Research Ltd*
- 5. Sindku tal-Kunsill Lokali tax-Xaghra, Ghawdex*
- 6. Kandidat tal-Partit Laburista ghall-Elezzjoni Generali*

Jirrizulta illi fil-parti ta' isfel ta' l-istess zewgt pagni tan-nofs tas-suppliment u mifruxa fuq iz-zewgt pagni, reggha hemm it-titolu "**L-Amministratur Finanzjarju tal-MLP wara l-iskandlu taz-zejt**" u hemm is-segwentu artikolu:

Dak li l-Labour sejjahlu bhala l-akbar skandlu politiku fl-istorja ta' Malta' - li jdur madwar allegazzjonijiet ta' tixhim fix-xiri taz-zejt - nhar il-Hamis li ghadda ha zvolta gdida ghal kollox hekk kif il-Partit Nazzjonalista zvela fatti li jimplikaw lil Joe Cordina, l-Amministratur Finanzjarju tal-Malta Labour Party.

Joe Cordina ssospenda lulu nnifsu f'it minuti biss wara li harget l-ahbar fil-pubbliku u dan jikkonferma dak li ntqal f'konferenza tal-ahbarijiet fid-Dar Centrali tal-Partit Nazzjonalista li wara l-iskandlu taz-zejt, m'hemm hadd hlief l-Amministratur Finanzjarju tal-Malta Labour Party Joe Cordina, li kien se jkun ukoll kandidat ghall-elezzjoni generali tad-9 ta' Marzu. Cordina hu wkoll is-Sindku tax-Xaghra.

Id-dettalji li pprezenta l-Partit Nazzjonalista permezz tal-Ministru Tonio Fenech, kienu msahhin b'dokumenti pubbliċi li ghandha l-Awtorità Maltija ghas-Servizzi Finanzjarji u li jizvelaw dettalji dwar il-kumpaniji li ssemew mill-maltatoday, minn fejn u fejn saru tranzazzjonijiet ta' kummissjonijiet dwar ix-xiri taz-zejt.

Fil-fatt, il-kumpanija li semmiet il-maltatoday hi I-kumpanija Aikon Ltd li minn kemm ilha li twaqqfet inbidlilha isimha tliet darbiet.

Il-kumpanija twaqqfet bl-isem MO Ltd. f'Ottubru 2002; sentejn wara f'Lulju 2004, l-isem inbidel ghal Petrotek Ltd, u x-xahar ta' wara, f'Awwissu 2004, l-isem inbidel ghal Aikon Ltd.

Fil-konferenza tal-ahbarijiet mill- Ministru Tonio Fenech, li xxandret live fuq it-televizjoni, kien spjegat li skont l-istorja tal-maltatoday, il-kumpanija Aikon kienet qed tirčievi kummissjonijiet mill-kumpanija Trafigura f'bank fi New York bl-isem ta' Wachovia Bank.

Ir-ricerka li ghamel il-Partit Nazzjonalista turi kif l-uniku shareholder, l-uniku direttur, ir-rappreżentant gudizzjarju u r-rappreżentant legali tal-kumpanija Aikon Ltd kienet Intershore Fiduciary Services Ltd, li d-diretturi taghha kienu Charles Scerri, Martin Fenech u proprju Joe Cordina, li hu - jew kien sal-Hamis - l-Amministratur Finanzjarju tal-Malta Labour Party.

Ta' min jinnota, li r-rwol ta' dak li jmexxi l-finanzi ta' partit politiku mhux sempliciment li jiffirma c-cekkijiet izda jkun responsabbli biex il-finanzi tal-partit jimxu l quddiem, u jara wkoll minn fejn igib il-flus biex il-partit ikollu minn fejn jonfoq.

Minbarra f'dan, minn Frar tas-sena 2011, Joe Cordina kien id-Direttur ta' tliet kumpaniji tal-MLP, jgifieri MLP Holdings Ltd., Sound Vision Print Ltd., kif ukoll Consultancy & Research Ltd.

Dan ifisser, spjega l-Ministru Tonio Fenech, li proprju wara dan l-iskandlu hemm dak li hu responsabbli mit-tmexxija tal-finanzi tal-Malta Labour Party, u li ta' spiss ikun fir-raba' sular tac-Centru Nazzjonali Laburista, minn fejn qed tkun deciza l-istrategija tal-Labour kif ukoll minn fejn ged tkun finanzjata l-kampanja elettorali Laburista.

Il-fatt li Joe Cordina qabad u irtira l-kandidatura tieghu u ssospenda lulu nnifsu mill-karigi li kellu fil-MLP, jgifieri ta' Amministratur Finanzjarju u direttur ta' tliet kumpaniji laburisti, juri bic-car li Cordina kien jaf mill-bidu nett x'kien ir-rwol tieghu f'dan l-iskandlu.

Minkejja li ssospenda lulu nnifsu, Joe Cordina ghażel li ma jidhirx quddiem il-media biex iwiegeb il-mistoqsijiet.

Ikkunsidrat

Jirrizulta illi Tonio Fenech, fil-Konferenza tal-Ahbarijiet illi ttellghet fil-Kwartieri Generali tal-Partit Nazzjonalista fil 21 ta' Frar 2013, qal is-segwenti:

Il-konferenza stampa li qed naghmlu llum, u l-konkluzjonijiet taghha huma bbazati fuq dokumenti pubblici li I-PN gabar b'relazzjon mal-iskandlu ta' xiri taz-zejt wara li hareg l-isem tal-kumpanija Intershore li kif se johrog minn din il-preżentazzjoni hi l-kumpanija li kienet responsabbli mill amministrazzjoni proprju tal-kumpanija Icon, il-kumpanija fic-centru ta dan l-iskandlu dwar ix-xiri u l-commissions relatati maz-zejt.

Tajjeb nghid ukoll qabel ma nidhol fid-dettal ta' din il-preżentazzjoni, lid-dokumenti kollha relatati ma' dak li ser nghid issa diga ntbaghtu ghand il-Kummissarju tal-Pulizija,

u kopja tal-istess dokumenti se jinghataw lilkom mill-PN fuq pen drive biex tkunu tistghu jkollkom intkom ukoll, ikollkom l- evidenza relatata.

X'johrog minn dawn id-dokumenti li jien se nsemmi. Johrog b'mod car li wara l-iskandlu taz-zejt, wara l-kumpanija Icon, fil-perjodu li gara dan l-iskandlu sal-bidu tal-2011, wara dan l-iskandlu hemm l-Amministratur Finanzjarju tal-PL. Wara gimghat li l-PL ilu jipprova jimplika politikamert minghajr success, xi ministru f'dan l-iskandlu, issa johrog bic-cara li wara dan l-iskandlu hemm l-Amministratur Finanzjarju tal-PL. U se nuri kif wasalna ghal din il-konkluzjoni.

Meta l-Malta Today zvelat din l-istorja, kienet tidher fdin l-istorja, kumpanija illi kien jisimha Icon. Kumpanija li kienet qed tircievi xi forma ta kummissjoni minghand il-kumpaniji taz-zejt. Kumpanija li ghandha storja ta' bdil ta' isminijiet. Kumpanija li fl-2002 bdiet bl-isem Mo Ltd; fl-2004, Lulju, bidlet isimha ghal Petrotek Ltd; f'Awwissu 2004 bidlet isimha ghal Aikon Ltd. Evidenza ta' dan il-bdil ta' isem huma proprju d-dokumenti formali tal- formazzjoni ta' Aikon Ltd li juru proprju l-bdil ta' isem ta'din il-kumpanija li f'dan il-perjodu kienet l-istess kumpanija li kienet amministrata minn din il- kumpanija Intershore.

Kif johrog bic-car anke mill-invoices li gew ipprezentati anke mill-istess gurnal Malta Today, il-kumpanija Aikon Ltd kienet qed tircievi commissions mill-kumpanija taz-zejt Trafigura, gewwa kont New York, jew ahjar f'bank li kien jismu Wachovia. Dawn il-flus, kienu iddirezzjonati ghal din il-kumpanija Aikon Ltd. Min kien f'dan il-perjodu l-kumpanija propju responsabbli minn Aikon Ltd? Kienet kunpanija li jisimha Intershore Fiduciary Services Ltd. Li johrog car mill-Memorandum of Articles of Association tal-formazzjoni ta' din il-kumpanija fis-17 ta' Awwissu 2004 Intershore Fiduciary Services Ltd kienet l-uniku shareholder, l-uniku direttur, kellha r-rappreżentanza guridika ta' din il-kumpanija, u kellha r rappreżentanza legali ta' din il-kumpanija. Fi kliem semplici kienet il-factotum. Hekk nghidu bil-Malti. Kienet responsabbli mill-2004 sa Jannar tal-2011. Min huma x-shareholders u d-diretturi wara Intershore Fiduciary Services Ltd.

Il-PN, wara li ssemmiet din il-kumpanija, ghamel ir-ricerka tieghu biex naraw min kien wara din il-kumpanija li kienet qed tamministra l-kumpanija Aikon, fic-centru propriu ta' din il-kontroversja. Fic-centru ta' dan l-iskandlu marbut max-xiri taz-zejt. U jissemmew tliet persuni li huma responsabbli ghal din il-kumpanija: Charles Sceri, Dr Martin Fenech u Joe Cordina li huma x-shareholders u d-diretturi ta' din il-kumpanija.

Wiehed jistaqsi: min hu Joe Cordina? Joe Cordina huwa l-Amministratur Finanzjarju tal-PL. Kif turi l-istess website ufficjali tal-PL, li proprju tghid li prezentament huwa l-Financial Administrator of the Malta Labour Party Financial Administrator mhux xi hadd li sempliciment jiffirma c-cekkijiet Financial Administrator huwa l-persuna li fi hdan partit politiku jamministra l-finanzi, jara minn fejn se jgib il-finanzi ghall-PL, jinvesti dawk il-flus, u jaghamel dak kollu li taghtih l-awtorita tat-titlu tieghu biex imexxi 'l quddiem il-qaghda finanzjarja tal-PL.

Mhux biss. Pero s-Sur Joe Cordina hu wkoll id-Direttur, ilu fil-fatt minn Frar tal-2011, id-direttur fil-kumpaniji kollha tal-PL. Il-kumpanija MLP Holdings Ltd, il-kumpanija Sound and Vision, u l-kumpanija Consultancy and Research Ltd. Tliet kumpaniji prinċipali tal-PL li proprju s-Sur Joe Cordina hu d-direttur fuqhom fil-kapaċita tieghu wkoll tal-Amministratur Finanzjarju tal-PL.

U ghalhekk johrog bic-car li kuntrarjament ghal dak li kien qed jiġi implikat, f dan l-iskandlu hemm proprju I-PL. II-PL li proprju hu fdan ic-centru. Fic-centru ta' operazzjoni shiha ta' dak kollu li kien qed jigri, kien hemm is Sur Joe Cordina, I-Amministratur Finanzjarju tal-PL. Kif turi proprju din l-istampa semplici, il-kummissjonijiet li Trafigura kienet qed tghaddi lil kumpanija Aikon Ltd, li kienu qed imorru gol Bank Wachovia gewwa New York, il-kumpanija li kienet geghda tamministra, topera, taghmel dak kollu amministrattivament, hija responsabbli, u tiehu d-decizjonijiet fdak li kienu l-operazzjonijiet ta' din il-kumpanija, kienet proprju l-kumpanija Intershore Ltd.

U hawn irrid nenasizza, Intershore Limited ma kinitx biss taghmel secretarial duties. Intershore Ltd kienet is-sole shareholder. Kienet l-uniku direttur, u direttur hu dak li jerfa' r-responsabbilta kollha ta' dak li taghmel il-kumpanija quddiem il-ligi. Kellha wkoll rapprezentanza guridika u rapprezentanza legali.

Proprju fl-Intershore hemm Joe Cordina. Nerga' nenasizza huwa - Amministratur Finanzjarju tal-PL. U allura I-konkluzjoni ta' din il-konferenza tal-ahbarijiet hija wahda semplici hafna. Wara dan l-iskandlu taz-zejt, issa johrog li hemm proprju I-Amministratur Finanzjarju tal-PL. II- PL li issa ilu minn Jannar jipprova jimplika xort'ohra, illum johrog bic-car min hemm wara din il-kumpanija. Wara din il-kumpanija hemm proprju Joe Cordina li mhux l-ewwel darba rajnih jipprezenta flus lil Joseph Muscat.

Ikkunsidrat

Jirrizulta illi, wara illi harget l-istorja rizultat tal-Konferenza tal-Ahbarijiet ta' Tonio Fenech, il-Financial Intelligence Analysis Unit talbet informazzjoni minghand ir-rikorrenti u, permezz ta' Ittra datata 4 ta' Gunju 2013, ir-rikorrent flimkien ma' Carmel Scerri u Dr Martin Fenech kellhom dan xi jghidu dwar l-allegazzjonijiet: (fol 36-41 – Rik 59/13)

We refer to your letter of the 17th May, 2013 and hereunder are submitting the information requested.

Mr. George Farrugia ID No 42865 M who was always the ultimate beneficiary shareholder of Aikon Ltd was introduced to us by Mr. Raymond Stafrace B.A. Hons Accty., CPA a registered public accountant and auditor. Mr. Stafrace is known to us as an honest and trustworthy person of high integrity. During the first meeting Mr. Stafrace accompanied Mr. Farrugia to our office.

We performed our due diligence on Mr. Farrugia obtaining a reference and a bankruptcy declaration from him. We also filled in a KYC and signed a fiduciary agreement. At that moment he emerged as the managing director of John's Garage group who is a reputable company and never had any financial problems or issues. Also we monitored the residential address of the beneficiary that never changed since our appointment.

Therefore we had no doubt in accepting him as our client.

Every year we obtained audited accounts of Aikon Ltd which were audited by Mr. Raymond Stafrace. These accounts showed turnover as follows:

2003	<i>Lm 11,071</i>
2004	<i>Lm 19,461</i>
2005	<i>Lm 56,948</i>
2006	<i>Lm 23,892</i>
2007	<i>Lm 21,326</i>
2008	<i>Euro 24,625</i>

These transactions were channeled through Bank of Valletta plc account Lascaris Wharf, Valletta US \$ account no 40013865739. The transactions were vetted by the auditor of the company and tally to the amounts reported in the financial statements.

At no point did we or the auditor have any reason to suspect that Mr. Farrugia was doing the alleged transactions. These accounts were filed with MFSA and the tax authorities and at no point did any government department or authority call upon us to enquire about any wrong doing by the company.

The accounts from 2009 onwards were filed by George Farrugia as a director and audited by Mr. Carmel D'Amato who is not known to us.

Given the limited volume of business and transactions carried out by Aikon Ltd and the constant monitoring and discussion with the auditor and also the fact that the financial statements were submitted regularly to the Inland Revenue and other authorities, we felt comfortable enough that no illegal transactions were being carried out.

In addition, one of the directors of Intershore used to notice Mr. Farrugia at the Sliema Aquatic Club having lunch on Sundays with his family and arriving at the club with a hired car. This used to happen year after year during the summer months. Nothing came to our attention regarding a changei lifestyle or any other matters that would have lead us to believe otherwise. Furthermore, we monitored constantly the accounts presented to us and had regular meetings with his auditor that confirmed the authenticity and accuracy of the books of accouts. Furthermore we were constantly chequing

The letter sent by Dr. Emmanuel Mallia to Dr. Siegfried Borg cole and copied to us was taken very seriously. Intershore wrote to Dr. Emmanuel Mallia declaring that it will be carrying out investigations on these claims and asking for evidence to sustain these claims. No reply has been received.

Following our investigations we found out that there was a breach of trust on the part of Mr. Farrugia and we terminated our professional relationship with him on the 1st November, 2010. This breach of trust resulted from commercial transactions that Aikon Ltd was doing with a related company thus having access to insider information. Nothing illegal emerged from our investigations as claimed by Dr. Mallia.

A meeting was held between Dr. Martin Fenech, Charles Scerri, Raymond Stafrace, George Farrugia and Dr. Siegfried Borg Cole (lawyer of Farrugia) at 362 Fleur De Lys Road B'Kara whereby we asked for the information regarding the case that Aikon Ltd (George Farrugia) had with his brothers. We were informed by Mr. Farrugia that Aikon Ltd could be in competition with Power Plan Ltd (company owned by his brothers) and that it carried out some activities in this regard.

We informed George Farrugia that we were terminating the fiduciary relationship with him with immediate effect as he did not have our trust anymore. Transfer of shares and directorship was effected on 1st November, 2010.

During this period an investigative report was being carried out by FST Consulting Limited regarding John's Garage Group. This report was commissioned by the brothers of Mr. George Farrugia and signed by Mr. Joseph Azzopardi director of FST Consulting Limited. This report was dated 20 January, 2011 and was later deposited in the law courts as evidence against Aikon Ltd and Mr. George Farrugia.

From the documentation presented in court and included in this report we come to the conclusion that

(a) Aikon Ltd was issuing legitimate invoices to its clients and channeling them through Bank of Valletta plc Lascaris wharf branch. These were the transactions we and the auditor of the company were aware of.

(b) The alleged illegal transactions were passed through Wachovia Bank NA New York Swift Code PNBPU33NYC in favour of Banque Privee Edmond De Rothschild SA, Geneva, Account number 2000193641387, Swift PRIBCHGG for further credit to Account 700.296 Aikon.

*This account was never opened in the name of **Aikon Ltd** but was opened under **Aikon by Mr. George Farrugia**. This account was never brought to the attention of the auditor of the company nor to the Fiduciary. In fact when specifically asked about the holding of any foreign accounts in the meeting of the 2nd November, 2010, he categorically denied having any foreign bank accounts. A declaration to this effect is held in our files.*

*Now it is evident that **the intention of fraud on the part of Mr. George Farrugia against the company auditor and the fiduciary** was from the outset. Whereas the invoices issued in respect of regular transactions were channeled through BOV, the others were channeled through Wachovia Bank. We now understand that he was doing parallel operations. We categorically deny having any knowledge of such activity.*

From the documentation presented in court, it resulted that the invoices issued by Mr. Farrugia were purposefully misleading in that the address of the company was given as Maria Dolores Fl 1 Mensija Road San Gwann Malta and the telephone numbers were given as Tel 00356 213747 and Fax 00356 213746.

The correct address and telephone numbers of Intershore Fiduciary Services was Maria Dolores Fl 2 Mensija Road San Gwann Malta and the telephone numbers were Tel 00356 21374747 and Fax 00356 21374646.

We suspect that this was also done purposefully so that any third party who tried to contact the company Aikon Ltd would not be able to do so.

The court case referred to above was filed by Power Plan Ltd, John's Group Limited, Raymond Farrugia, Anthony Farrugia, Gaetano Farrugia, Saviour Farrugia and Emanuel Farrugia (brothers) against George Farrugia his wife Katherine, Aikon Ltd and Intershore Fiduciary Services Limited. Powerplan and George Farrugia arrived at an amicable settlement whereby George Farrugia paid a substantial amount of money

case was eventually withdrawn. to Power Plan or his brothers. At no stage was Intershore participant in this agreement. The case was eventually withdrawn.

Please be informed that even though Powerplan Ltd included Intershore Fiduciary Services Limited as one of the defendants, we were assured by the lawyers of the plaintiffs that this was being done for court procedural requirements. In fact when the court case was amicably settled no monies or funds was being done for were paid out by Intershore. At that time, we felt that this was a normal commercial dispute between the members of the Farrugia family, which could not have had a bearing on our license status.

In conclusion, we like to point out that what has been reported in some sectors of the media was purely the result of political allegations. It has now transpired through the sworn evidence of the assistant commissioner of police Mr. Michael Cassar that Mr. George Farrugia under oath admitted the following:

- (1) He carried out parallel trading on his own accord.*
- (2) He never informed Intershore or any of its directors of this parallel activity*
- (3) He issued the false invoices himself*
- (4) He received the funds in his own name.*
- (5) He disposed of these funds without knowledge of Intershore*
- (6) He even declared in court that Intershore could have never known of these facts.*

We feel that we were being politically victimized to the detriment of our personal and company's reputation. We also are of the belief that this victimization has tarnished the reputation of the financial services industry in general, when considering that the facts show otherwise.

Jirrizulta illi Dr Manfred Galdes, dak iz-zmien Direttur tal-Financial Intelligence Analysis Unit, fil 11 ta' Lulju 2013 kiteb lura lill Charles Scerri u qal is-segwenti: (fol 42 – Rik Nru 59/13)

We thank you for the information and documentation provided in your letter dated 4th June 2013 in relation to the actions that Intershore Fiduciary Services Limited had taken to fulfill its obligations under the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008 when providing services to Aikon Limited.

Following careful consideration of the information and documentation provided, we would like to inform you that the FIAU has no further enquires at this stage.

Ikkunsidrat

Jirrizulta illi l-intimat, bhala linja difensjonali qajjem zewgt eccezzjonijiet, ossija wahda illi r-rappurtagg kien kopert mill-privilegg kwalifikat pprovdut fl-illum defun Artikolu 12A tal-Kap 248, u l-ohra illi dak illi ntqal kien fair comment.

Il-Qorti ser tghaddi biex l-ewwel tikkunsidra l-ewwel linja difensjonali – ossija tal-privilegg kwalifikat:

L-Artikolu 12A ta' l-illum defunt Kap 248 intitolat Att dwar l-Istampa kien jghid li gej:

Fi proċeduri meħuda in forza ta' dan l-Att tkun difiża għall-editur jew għar-responsabbli għall-pubblikazzjoni li jipprova li l-informazzjoni pubblikata kienet tikkonsisti f'rapport preċiż ta' diskors li sar f'avveniment pubbliku importanti minn persuna identifikata u li kienet taf jew raġonevolment setgħet tkun taf jew tistenna li l-kontenut ta' dak id-diskors se jiġi publikat f'gazzetta jew f'mezz tax-xandir, u li l-pubblikazzjoni tal-istess diskors kienet raġonevolment ġustifikabbli f'socjeta' demokratika.

Minn qari akkurat tal-artikolu meritu tal-kawza odjerna, kif ukoll il-mod illi dina giet rappurtata, bl-utilizz ta' skeda illustrata b'kummenti varji, il-Qorti ma tistax ma tosservax illi, fil-kaz odjern, l-artikolist illi rrediga tali rrapport ma illimitax ruhu biss fir-rappurtagg ta' dak illi kien qal Tonio Fenech fil-Konferenza tal-Ahbarjiet tieghu, izda għadda varji kummenti, bhalma hija meta qal is-segwenti:

Il-fatt li Joe Cordina qabad u irtira l-kandidatura tieghu u ssospenda lillu nnifsu mill-karigi li kellu fil-MLP, jigifieri ta' Amministratur Finanzjarju u direttur ta' tliet kumpaniji laburisti, juri bic-car li Cordina kien jaf mill-bidu nett x'kien ir-rwol tieghu f'dan l-iskandlu.

Il-Qorti tosserva illi kieku l-artikolist illimita ruhu billi jirrapporta dak illi qal Tonio Fenech fil-Konferenza tal-Ahbarjiet, kiena għalhekk ikun ġustifikat illi jqajjem tali eccezzjoni b'success, stante illi l-Ligi kienet tipproteġieh.

Madanakollu, il-fatt illi l-artikolist għazel illi, flimkien mar-rappurtagg, jzid kummenti tieghu, bhal dawk fuq imsemmija, huma sufficjenti biex id-difiża tal-l-artikolu 12A ma japplikax, stante illi l-artikolist għaqqad flimkien rappurtagg u kumment, bir-rizultat illi rrenda lillu nnifsu suxxettibbli għall-azzjoni ta' libel minghajr il-protezzjoni mogħtija lill-gurnalist illi fedelment jirrapporta dak illi jintqal u jieqaf hemm.

Ikkunsidrat

It-tieni linja difensjonali ta' l-intimat kienet dik relatata mad-dritt illi jesprimi l-opinjoni tieghu bbazata fuq fatti sostanzjalment veri u għalhekk tammonta għall- "*fair comment*" jew "*value judgement*" dwar persuna pubblika, u dana huwa dritt ta' kull cittadin protett kemm mill-Kostituzzjoni ta' Malta u kemm mill-Konvenzjoni Ewropea

L-ewwel u qabel kollox, huwa fatt illi r-rikorrent fil-mument meta saret il-pubblikazzjoni kien persuna pubblika peress illi kien Kandidat għall-elezzjoni generali mal-Partit Laburista meta harget l-istorja meritu tal-kawza odjerna. Kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both

journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Mill-banda l-ohra, kif qalet il-Qorti Ewropea fil-kawza **Fresos & Roire vs France**

“the press plays an important role in a democratic society, although it must not overstep certain bounds, in particular in respect of reputation and rights of others. People exercising freedom of expression including journalists undertake duties and responsibilities.”

Jirrizulta, di fatti, illi l-intimat, fid-difiza, qieghed jappella ghad-dritt tal-liberta ta' l-espressjoni w id-dritt tal-gurnalist illi huwa kellu, u f'dana il-kuntest il-Qorti taghmel ukoll referenza ghall-kawza deciza mill-Grand Chamber tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-ismijet **Axel Springer AG vs Germany** deciza fis-7 ta' Frar 2012, fejn intqal is-segwent:

78. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”. As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly

79. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”

L-istess Qorti tkompli tghid:

81. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see Pedersen and Baadsgaard, cited above, § 71). Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.

Din il-Qorti ma tistax ma tosservax illi, kif jghidu l-Qrati nostrani u esteri, ir-rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandu jigi bilancjat bi drittijiet u

obbligati fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da' parte tal-gurnalist, u ghalhekk, kif tghid il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-kawza gia fuq imsemmija:

82. However, Article 10 § 2 of the Convention states that freedom of expression carries with it “duties and responsibilities”, which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

L-istess intqal fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, fejn ziedet tghid:

.... the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

Tali principju reggha gie ripetut fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricientement, ossija fil 21 ta' Ottubru 2014, fuq meritu simili ghal dak in ezami, fejn intqal is-segwenti:

62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism . Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

Huwa ghalhekk dover ta' dina il-Qorti sabiex tassikura illi jintlahaq bilanc bejn id-dritt tal-liberta' ta' l-esspressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u dana sabiex jigi assikurat li hemm tali

bilanc, ghal liema bilanc il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem niedet sitt kriterji importanti sabiex jigi assikurat illi, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

Tali kriterji gew mhaddna anke mill-Qrati taghna, kif qalet il-Prim Awla tal-Qorti Civili fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, fejn osservat korrettement illi :

dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati taghna li, biex id-difiża tal-kumment ġust tkun tghodd, jeħtieġ li min jistrieħ fuqha jseħhlu juri li

- (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment;*
- (b) il-fatt imsemmi jrid ikun sostanzjalment minnu;*
- (c) il-kumment irid jintwera li jkun ġustifikabbli jew misthoqq;*
- (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajir jew insolenza; u*
- (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.*

Dawna l-qrati, madanakollu, dejjem iprotegaw il-gurnalizmu investigattiv, u di fatti, kif stqarret il-Qorti tal-Appell fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud**, deciza fit-3 ta' Frar, 2012:

“gurnalizmu investigattiv ghandu jingħata ampja protezzjoni f'socjeta' demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa' allegazzjoni mhux pruvata kif trid il-Ligi. F'dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista' wkoll ikun tollerat.”

Din il-Qorti, madanakollu, ma tistax ma tergghax tirripeti dak illi hija gia kellha l-opportunita tghid fil-kawza mhux appellata fl-ismijet **“Alan Camilleri vs Saviour Balzan”** u deciza fl-20 ta' Gunju 2016 fejn dwar il-gurnalizmi w id-doveri taghha, sahqet li

“ ... ghalkemm huwa d-dover tal-gurnalist illi jgharraf u jzomm lill-pubbliku w il-qarrejja a korrent ta' kull informazzjoni relatata ma' agir ta' persuni pubblici, kemm politici kif ukoll persuni fis-servizz civil u f'posizzjonijiet importanti fis-socjeta civili, huwa ferm aktar importanti illi l-gurnalist jassikura ruhu illi l-fatti kif minnu indikat huma sostanzjalment veri u, f'kaz illi huwa ma jkollux konfort ta' provi sufficienti, ghandu jzomm lura milli jippubblika tali stejjer, stante illi l-pubblikazzjoni ta' l-istess jwasslu sabiex il-kredibilita' tal-gurnal u l-gurnalist tigi pregudikata u, aktar importanti, il-pubbliku in generali jingħata informazzjoni illi ma jkunx minnu, fatt illi, minnu nniffsu, huwa ta' hsara kemm lill-persuna illi dwarha qed issir l-istorja u, aktar u aktar, lill-gurnalizmu il-general, li jisthoqqli rispett ghax-xoghol siewi u ta' utilita' kbira ghas-socjeta demokratika hajja illi Malta tgawdi illum il-gurnata.

Di fatti, kif gie osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza **'Sylvana**

Debono vs Alexander Farrugia', deciza fis-27 ta' Jannar, 2016.

Id-dritt tal-liberta tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbaghad tipprova tistahba wara dan id- dritt.

Dwar il-kuncett ta' '*value judgment*', il-Qorti taghmel referenza ghal dak illi qalet il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567, para 43, tghid is-segwenti:

... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it .”

Finalment, dwar l-principju tad-difiza tal-'*fair comment*' **Gatley on Libel and Slander** jghid:

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Jirrizulta car, ghalhekk, mill-gurisprudenza fuq imressqa, illi hemm sabiex id-difiza ta' '*fair comment*' u '*value judgment*' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi l-bazi ta' l-istorja kollha hija l-esistenza ta' socjeta bl-isem ta' Aikon Limited, liema socjeta kienet sussegwentement allegatament qed tintuza mill-beneficjarju taghha George Farrugia, sabiex tircievi flejjes minn bejjiegħa taz-zejt, liema flejjes kienu eventwalment allegatament jintuzaw sabiex jixxahhmu funzjonarji tal-Enemalta biex l-Enemalta tixtri iz-zejt minghand tali kumpanniji esteri.

Jirrizulta illi, in sostenn ta' tali allegazzjonijiet, Tonio Fenech, illi kien il-persuna li għamel tali alllegazzjonijiet pubblici, ressaq varji dokumentazzjoni, fosthom rapport intitolat Powerplan Limited Investigative Audit Report datat 20 ta' Jannar 2011 u redatt minn Joseph Farrugia fuq struzzjonijiet ta' John's Garage Group of Companies.

Jirrizulta, di fatti, illi hut George Farrugia kienu qed jallegaw illi l-istess George Farrugia, li kien qieghed imexxi l-kumpannija Powerplan Limited, li kienet wahda mill-kumpanniji fil-grupp ta' kumpanniji John's Garage, kien qieghed attwalment jghaddi xogħol tramite il-kumpannija privata tieghu, Aikon Limited, flok ma uza l-kumpannija Powerplan Limited, u dana biex iqarraq b'hutu.

Jirrizulta illi l-persuna mqabba minn hut George Farrugia sabiex jirredigi rapport biex jipprova illi l-istess George Farrugia kien qieghed iqarraq b'hutu, kellu dan xi jghid, fost affarjiet ohra: (fol 103 – 59/13)

The sole director in Aikon Limited is Intershore Fiduciary Services Limited and it is presumed that a mandate was given by said director to open both bank accounts as indicated above. This would also indicate that the director in Aikon was cognizant of the scope of the business of the company. It is also presumed that Intershore Fiduciary Services Limited being a licenced fiduciary, undertook a know-your-client (KYC) exercise on Mr. George Farrugia prior to the registration of the company which KYC should have been updated on a regular basis. This KYC exercise should have indicated that Mr. George Farrugia was a full time employee and a director of Powerplan Limited, a company that carries on a business identical to that undertaken by Aikon Limited. The fiduciary relationship between Intershore Fiduciary Services Limited and Mr. George appears to have been used to veil a parallel operation in which Mr. George Farrugia had a distinct conflict of interest. As a director in Powerplan Limited Mr. George Farrugia was obliged to act in good faith towards the interest of the company. Chanelling business and funds away from Powerplan Limited to Aikon Limited and using a fiduciary relationship to hide a parallel operation is definitely not in the interest of Powerplan Limited. It appears that the sole director of Aikon Limited was an accomplice in this structure.

Jirrizulta illi l-intimat fl-ebda mument ma ressaq bhala prova lill dan Joseph Azzopardi u/jew lill George Farrugia sabiex jixhed dwar tali fatti u Tonio Fenech strieh unikament fuq tali dokument minghajr ma ghamel verifiki ulterjuri.

Jirrizulta, mill-banda l-ohra, illi r-rikorrent Joseph Cordina, flimkien maz-zewgt persuni l-ohra mieghu involuti fis-socjeta Intershore Fiduciary Services Limited, Charles Scerri u Dr Martin Fenech, kellhom l-opportunita illi jaghmlu spejgazzjoni dettaljata tal-fatti kollha lill unika entita' lokali awtorizzata sabiex taghmel tali investigazzjonijiet, ossija il-Financial Intelligence Analysis Unit (FIAU) u dana permezz ta' ittra dettaljata datata 4 ta' Gunju 2013.

Jirrizulta illi, minn tali spjegazzjoni, jirrizulta illi qabel ma bdew bir-relazzjoni fiducjarja ma' George Farrugia, huma ghamlu l-verifiki taghhom, maghrufa wkoll bhala Know Your Client (KYC), kif ukoll regolarment kienu jaghmlu l-verifiki taghhom u, fl-ebda mument ma deher illi l-istess George Farrugia kien qieghed jagixxi b'mod illi seta b'xi mod iqajjem suspett.

Jirrizulta illi, mument minnhom, fis-sena 2010 is-socjeta Intershore Fiduciary Services Limited giet mggharrfa minn hut George Farrugia illi kien hemm suspett li George Farrugia kien qieghed juza s-socjeta Aikon Limited sabiex iqarraq b'hutu u japproprja ruhu minn flejjes illi kellhom jigu mqieghda f'kumpannija ta' l-ahna, ossija Poweplan Limited.

Jirrizulta illi minnufih is-socjeta Intershore Fiduciary Services Limited bdiet taghmel l-investigazzjonijiet taghha u, kif tghid l-istess socjeta Intershore Fiduciary Services Limited lill FIAU, "Following our investigations we found out that there was a breach of trust on the part of Mr. Farrugia and we terminated our professional relationship with him on the 1st November, 2010".

Jirrizulta wkoll, kemm mill-ittra tas-socjeta Intershore Fiduciary Services Limited lill FIAU kif ukoll minn dokumentazzjoni ippresentata minn Tonio Fenech, illi George Farrugia kien qieghed juza bank iehor illi ma kienx il-bank tas-socjeta Aikon Limited, ossija il-Bank ta' New York, Wachovia Bank, u dana sabiex it-transazzjonijiet ma jigux registrati mas-socjeta Aikon Limited, tant hu illi l-istess invoices esebiti minn Tonio Fenech (fol 73 sa 75) juru li d-dettalji innizzla ma humiex tas-socjeta Aikon Limited, izda Aikon.

Jirrizulta illi l-Financial Intelligence Analysis Unit, wara illi qieset d-dokumentazzjoni kollha pprovduta mis-socjeta tar rikorrenti, gharrfet lill-istess socjeta illi *“Following careful consideration of the information and documentation provided, we would like to inform you that the FIAU has no further enquires at this stage.”*

Jirrizulta, ghalhekk, illi l-Financial Intelligence Analysis Unit, illi hija l-entita' ufficjali inkarigata mill-istharrig ta' transazzjonijiet suspetti ta' kumpanniji u persuni involuti f'tali kumpanniji, ikkonkludiet illi ma kellha ebda investigazzjoni ulterjuri x'taghamel abbazi tad-dokumentazzjoni u informazzjoni mghoddija, indikazzjoni li ma sabet xejn irregolari dwar l-agir tas-socjeta Intershore Fiduciary Services Limited, a differenza ta' dak illikien qieghed jigi allegat.

Ikkunsidrat

Jirrizulta illi l-intimat, fl-esposizzjoni tal-fatti tal-allegazzjonijiet maghmulha minn Tonio Fenech fil-konfront tar-rikorrent, filwaqt illi indika lir-rikorrent Joe Cordina bhala fic-centru ta' dana l-iskandlu taz-zejt, jaghlaq l-artikolu tieghu bis-segwenti allegazzjoni:

Il-fatt li Joe Cordina qabad u irtira l-kandidatura tieghu u ssospenda lilu nnifsu mill-karigi li kellu fil-MLP, jigifieri ta' Amministratur Finanzjarju u direttur ta' tliet kumpanniji laboristi, juri bic-car li Cordina kien jaf mill-bidu nett x'kien ir-rwol tieghu f'dan l-iskandlu.

Jirrizulta, madanakollu, illi tali assersjoni da' parte tal-artikolist w il-gazzetta, illi tieghu l-intimat kien l-editur, kienet zbaljata, peress illi ma kienetx ibbazata fuq fatti sostanzjalment veri, izda bbazata fuq fatti kif esposti minn Tonio Fenech illi kien ibbaza ruhu fuq rapport 'ex parte' ta' l-ahwa ta' George Farrugia redatt appozitament sabiex jippruvaw frodi da parte ta' l-istess George Farrugia, li fih assersjonijiet unilaterali ta' Joseph Zammit, Awditur imqabbad mill-ahwa ta' George Zammit.

Jirrizulta ukoll illi johrog car illi l-intenzjoni tal-pubblikazzjoni kienet unikament sabiex titfa dell ikrah fuq ir-rikorrent, u dana ghar-ragunijiet segwenti:

- il-pubblikazzjoni saret fl-24 ta' Frar 2013 filwaqt illi l-Elezzjoni Generali kellha ssir fid 9 ta' Marzu 2013, ossija anqas min gimghatejn wara;
- ir-rapport li abbazi tieghu saru l-allegazzjonijiet kien rapport redatt fl-20 ta' Jannar 2011, ossija aktar minn sentejn qabel;
- l-allegazzjonijiet saru in risposta ghal allegazzjonijiet illi kienu qed isiru fil-konfront ta' varji esponenti tal-Gvern ta' dik il-gurnata w il-Partit Nazzjonalista in konnessjoni mal-hekk imsejjha 'Skandlu taz-zejt'

Jirrizulta, finalment, illi l-hsara mixtieqa fil-konfront tar-rikorrent attwalment saret, stante illi r-rikorrent irtira l-kandidatura tieghu ghall-elezzjoni generali li kienet ser issir gimghatejn wara fejn kien hiereg ghan-nom tal-Partit Laburista.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimat,

Tilqa it-talbiet attrici, u ghalhekk, filwaqt illi

Tiddikjara il-kontenut tal-artikolu intestat 'L-Amministratur Finanzjarju tal-MLP wara l-iskandlu taz-zejt' ippubblikat fil-harga tal-Hadd 24 ta' Frar 2013 fil-gurnal l-Mument, bhala libelluz u malafamanti fil-konfront tar-rikorrenti.

Tikkundanna lill-intimat ihallas lir-rikorrenti bhala danni a tenur tal-Artikolu 28 tal-Kap 248 is-somma ta' tlett elef Euro (€2,000).

Spejjez u Imghax fuq is-sorte mid-data tas-sentenza sad-data tal-pagament effettiv a karigu ta' l-intimat.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur